

Charities and Not-for-Profits: A Modern Legal Framework

The Government's response to 'Private Action, Public Benefit'



Home Office
BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

Further copies of this document are available from:

Henry Wood
Active Community Unit
Home Office
3rd Floor
Allington Towers
19 Allington Street
London SW1E 5EB

Telephone: 020 7035 5352

Fax: 020 7035 5386

This document can be accessed from The Home Office's Internet site: <http://www.homeoffice.gov.uk/>



Home Office

BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

Charities and Not-for-Profits: A Modern Legal Framework

The Government's response to 'Private Action, Public Benefit'

July 2003
The Home Office

Contents

Foreword	The Home Secretary, The Rt Hon David Blunkett, MP	
Chapter 1	Introduction	5
Chapter 2	General Comments on The Review	6
Chapter 3	Recommendations for Modernising Charity Law and Charitable Status	7
Chapter 4	Recommendations for Improving the Range of Legal Forms	15
Chapter 5	Recommendations for Ensuring Accountability and Transparency, Building Public Confidence	18
Chapter 6	Recommendations for Ensuring Independent, Fair and Proportionate Regulation	28
Annex A	Type of respondent	38
Annex B	Summary: Review recommendations and the Government's intentions	39

Foreword

The charitable and not-for-profit sector in this country is one of our greatest assets. More than half a million organisations – charities, community and self-help groups, social businesses – are active across every area of our national life, helping to transform the lives of citizens and to revive communities. The Government believes unequivocally that a flourishing, independent not-for-profit sector is essential for the health of our democracy.

The Government supports not-for-profit organisations in many ways. One of the most important is to ensure that the legal and regulatory framework within which organisations operate allows them to realise their full potential. In commissioning a Review, by the Strategy Unit, of the law and regulation in this area, the Prime Minister recognised that it was in some respects outdated or obstructive.

The Strategy Unit's thorough and imaginative Review has been well-received on public consultation, as this Government response describes. I am very grateful to the 1100 people and organisations who contributed views. By doing so they have helped to inform our actions.

In February this year I announced that the Government would be preparing a Charities Bill to take forward the Review's charity law proposals. We will publish the Charities Bill in draft as soon as possible. Work is already in progress to take forward the proposals for a Community Interest Company and for reforms to Industrial and Provident Society law.

These reforms are very important. They will highlight the public character of charities and their role as a force for good in society. They will enable organisations to be more effective in their work. And they will help sustain the high level of public confidence and trust without which charities could not flourish.



DAVID BLUNKETT

1

Introduction

1.1 In July 2001 the Prime Minister commissioned the Strategy Unit to carry out a review of the law and regulation of charities and other not-for-profit organisations. The objectives of the Review were to:

- modernise charity law and status to provide greater clarity and a stronger emphasis on the delivery of public benefit;
- improve the range of available legal forms enabling organisations to be more effective and entrepreneurial;
- develop greater accountability and transparency to build public trust and confidence; and
- ensure independent, fair and proportionate regulation.

1.2 The Review (“Private Action, Public Benefit”)¹ was published in September 2002. It was not a statement of Government policy but a series of recommendations made for the Government to consider.

1.3 To help it in considering the recommendations, the Government sought the views of organisations and people interested in the law and regulation of not-for-profit organisations through an open public consultation.

1.4 The consultation period ran from 25 September to 31 December 2002. The Review was distributed in hard copy and was placed on the Strategy Unit’s website. Members of the Review team and the Home Office’s Active Community Unit (ACU) took part in some 50 consultation events around the country to publicise the Review and to invite responses to it. Responses to the Review have been analysed by ACU.

1.5 This document:

- summarises the comments made by respondents to the public consultation; and
- indicates the Government’s intentions on each of the Review’s recommendations.

¹ no longer available in hard copy but available at www.number-10.gov.uk/su/voluntary/report/index.htm

2

General Comments on The Review

2.1 There were 1087 written comments on the Review. Annex A to this document shows the numbers of respondents in different categories.

2.2 The majority of respondents made no general remarks about the Review, confining their responses to comments on specific recommendations. Of the respondents who made general remarks:

- 408 welcomed and approved of the Review as a whole. 117 of these urged the Government to introduce legislation to implement the Review;
- 14 disapproved of the Review. Most thought either that it was unnecessary or that, overall, it would add to the burden of regulation.

2.3 19 respondents said that the consultation had not been well enough publicised.

2.4 In the following four sections of this document the Review's recommendations are set out in full in italics. The numbers in brackets after each recommendation show the recommendation number, as listed in Annex 2 of the Review, followed by the paragraph number where the recommendation appears in the main report of the Review (eg 32/6.40 means recommendation 32 at paragraph 6.40).

2.5 Annex B to this document is a summary of the Government's intentions for taking forward each of the recommendations.

3 Recommendations for Modernising Charity Law and Charitable Status

Definition of charity

Rec: That charity be redefined in law, based on the principle of public benefit and falling under one of ten new purposes of charity. (1/4.18)

3.1 489 respondents commented on this recommendation, more than on any other single recommendation.

Summary of responses

General comments

3.2 Over 95% of respondents accepted the Review's basic proposition that:

- there should be a statutory list of charitable purposes (many religious and educational charities, in particular, supported this because it would confirm their purposes as charitable); and
- charity should continue to be based on the principle of public benefit.

3.3 The small minority (4%) who opposed the recommendation did so in the belief that the current common law definition of charity continued to serve well and that there was no need for change.

List of charitable purposes

3.4 The Review had proposed (para. 4.13) that the statutory list of charitable purposes should consist of nine specific categories and a tenth "other purposes of benefit to the community" category. The tenth category would include those purposes that were not covered by any of the nine specific categories but that were already charitable under the existing law. There were many suggestions made by respondents for additions to the list of specific purposes proposed by the Review. Three suggestions had particular support, not only from organisations with these purposes but more widely:

- promotion of animal welfare;
- provision of social housing;
- advancement of science.

3.5 Respondents arguing for the addition of these purposes recognised that they were already charitable, and would continue to be charitable as they fell into the new tenth category, but felt that they were significant enough purposes to warrant a specific place of their own in the list.

3.6 By contrast, there was no consensus for removing any of the categories proposed by the Review. Single-figure numbers of respondents suggested removing charitable status from each of the following:

- religious organisations;

- independent schools;
- “poor relations” charities (ie trusts set up by a benefactor to relieve poverty among members of his or her family).

Public benefit

3.7 The Review discussed (para. 4.18) the relative merits of retaining the current common law definition and moving to a statutory definition of public benefit. It concluded that the advantage lay in retaining the current common law definition. Respondents overwhelmingly agreed with the Review’s conclusion, only 2% favouring the enactment of a statutory definition.

3.8 The 26% of respondents who were, or who represented, independent schools strongly opposed a statutory definition of public benefit.

3.9 The Review explained (para. 4.6) that, at present, organisations for the relief of poverty, the advancement of religion, and the advancement of education enjoy a legal “presumption” of public benefit. This means that organisations with those purposes do not have to show that they exist for the public benefit: the law presumes that, unless there is evidence suggesting otherwise, they exist for the public benefit and, therefore, that they are charitable. Other organisations have to show public benefit before they can be accepted as charitable.

3.10 The Review recommended (para. 4.18) that the presumption should be removed. There was clear majority support from respondents for this recommendation, although a number of educational and, especially, religious organisations opposed it.

3.11 The Review’s confirmation (para. 4.33) that the celebration of a religious rite that is open to the public should continue to be regarded as providing public benefit was welcomed by religious organisations. But the fact that the Review did not give the same confirmation in respect of evangelism and missionary work caused concern to some of the same organisations.

The Government’s intentions

3.12 The legal definition of charity sets the scope for all charitable endeavour. At present the definition is largely inaccessible to the lay person, because of its foundation in the common law. The public cannot readily see the great range and diversity of charity or fully appreciate the central role that charities play as a force for good in national life. And, while the definition of charity has in most areas developed to reflect changes in society, the Review correctly identified some areas (the prevention of poverty; promotion of amateur sport; and the promotion of human rights, conflict resolution and reconciliation) which need to be confirmed as charitable with greater certainty. The Government therefore accepts the Review’s recommendation for a new definition of charity based on the principle of public benefit, and intends to provide for it in the proposed Charities Bill.

List of charitable purposes

3.13 The Government intends that the new statutory list of charitable purposes proposed by the Review will not exclude any purposes which are currently charitable. The Government agrees that the present uncertainties surrounding the prevention of

poverty, the promotion of amateur sport and the promotion of human rights, conflict resolution and reconciliation should be resolved by establishing them clearly as charitable purposes.

3.14 The Government intends to augment the Review's proposed list of charitable purposes with:

- the promotion of animal welfare;
- the provision of social housing;
- the advancement of science (which will be added to the proposed purpose for the advancement of culture, arts and heritage).

3.15 These three purposes are already well-established as charitable and would be covered by the Review's proposed tenth category of "other purposes beneficial to the community". The specific inclusion of these three purposes will not, therefore, create any new charitable purposes. But the Government believes that the specific purposes contained in the list should reflect major areas of charitable endeavour which have, or should have, strong public recognition. The three proposed additions have a strong claim on that basis. The list should serve to align the legal definition of charity with the popular understanding of what is, or should be, charitable.

Public benefit

3.16 The Government agrees with the Review's conclusion that public benefit should be at the heart of the definition of charity. The new definition, like the current non-statutory one, would operate in practice as a two-stage test. To qualify as charitable, an organisation would have to show, first, that its purposes, as set out in its constitution, fell within one or more of those in the new list; and, second, that it was established for the public benefit. This would rule out organisations which, although they had purposes falling within the list, were not demonstrably for the public benefit (eg because the services or benefits they provided were not open to a wide enough section of the population, or because they were run for private benefit).

3.17 The Review discussed (para. 4.18) the merits of continuing with the present, non-statutory, definition of public benefit against those of moving to a statutory definition. It favoured retaining the non-statutory approach, for reasons – flexibility, certainty, and its capacity to accommodate the diversity of the sector – which the Government endorses. The Government does not, therefore, intend to move to a statutory definition of public benefit.

3.18 The Government agrees that the presumption of public benefit for charities for the relief of poverty, the advancement of religion and the advancement of education should be removed. The presumption has in any case been of limited benefit to charities since the Charity Commission, at the point of registration, examines the public benefit credentials of all applicants, without distinction between those pursuing purposes said to enjoy the presumption and those pursuing other purposes.

3.19 Removing the presumption of public benefit will not affect the continuing charitable status of religious organisations that carry out missionary and evangelistic work.

Checks on the public character of charities

Rec: The Charity Commission should undertake on-going checks on the public character of charities. (2/4.30)

Summary of responses

3.20 This recommendation attracted comments from 151 respondents. Among them were a significant number of independent schools, who believe that they can show that they exist and operate consistently with the public character requirement. Many independent school respondents described ways in which they make their educational and other facilities available more widely than just to those who can afford to pay their full fees. Some schools also described partnerships with their local communities and with schools in the state sector. The great majority of schools acknowledged the concerns behind this recommendation and expressed themselves willing to cooperate with the Charity Commission.

3.21 Among other respondents there was a high degree of support for the recommendation. A minority said that the definition of “high fees”, and the criteria for carrying out the checks, were unclear from the Review. A small number (single figures) felt that there was a danger that the checks would be carried out in an arbitrary way.

3.22 Some fee-charging charities in sectors other than independent education were unclear whether or not they would be included in the programme of checks.

3.23 A small number of respondents (single figures) viewed the recommendation as an assault on independent schools.

3.24 A major concern raised by legal respondents was that the Review did not discuss what might happen to the assets of any charities that lost their charitable status after “failing” the proposed public character checks.

The Government’s intentions

3.25 The Government supports this recommendation. At present, the only systematic examination of the public character of organisations is made at the time the organisation applies to register as a charity.

3.26 If doubts arise about the public character of particular charities or classes of charity – in this case, charities that charge high fees – those charities should be examined and the doubts either confirmed or refuted. Otherwise, charity itself will fall into disrepute as organisations whose charitable status is (rightly or wrongly) perceived as questionable continue to benefit from it.

3.27 The Review saw the checks as a means of encouraging “under-performing” organisations to develop their performance rather than immediately losing charitable status. The Government endorses this. It believes that, if the question of loss of status does arise, the existing law (s. 13 of the Charities Act 1993) generally provides for the use of assets of charities whose purposes have ceased to be charitable. The law provides for those assets to be devoted to other, charitable, purposes close to the purposes that have ceased to be charitable.

Trading by charities

Rec: To amend charity law to allow charities to undertake all trading within the charity, without the need for a trading company. The power to undertake trade would be subject to a specific statutory duty of care. (3/4.47)

Summary of responses

3.28 This recommendation attracted comment from 297 respondents, with 84% expressing support. Large charities, umbrella bodies and professional advisers were prominent among supporters.

3.29 The recommendation was welcomed because it would give charities an extra option as to how they organised an aspect of their income-generation activity. As the Review recognises (para. 4.48) many charities regard the current trading rules as imposing an unnecessary administrative burden.

3.30 However, a high proportion of supporters said that their support was conditional or “on balance”. The condition made by those respondents was that, if the recommendation was implemented, charities electing to trade were placed in as favourable a tax position as charities electing to have their trade carried out by a non-charitable subsidiary under their control. In practice, this would principally mean amending tax legislation to exempt charities’ trading profits from corporation tax. Respondents recognised that the Review’s remit did not extend to the taxation of charities, but many appear to have taken the Review’s statement (para. 4.48) that the recommendation would be largely tax neutral to imply that their condition would be met. At present, profits made by trading subsidiaries are normally passed to their parent charities free of tax under the Gift Aid scheme.

3.31 Both the “on balance” supporters and the opponents of the recommendation shared concerns:

- that there could be increased risks to charity assets. Charities’ assets would be available to creditors to meet trading liabilities. In extreme cases this could force charities to reduce their services to users and beneficiaries, since assets used in the course of charitable work might have to be diverted into paying off the debts of failed trading ventures;
- that the boards of many charities presently lack trustees with the commercial experience and acumen to establish and conduct trading operations;
- that trustees of unincorporated charities might be more exposed to personal liability, since their liability would also extend to trading debts;
- that some charities might develop trading to such an extent that they became to all intents and purposes trading operations with a charitable sideline. This would not only bring their charitable status into question but, if widespread, it could erode in the public eye the present clear distinction between charities and commercial organisations. This could damage public confidence in charities.

3.32 The proposed new duty of care would reduce risks in some of these areas (by, for instance, requiring the charity to structure its trade in a way that avoided exposing its assets to undue risk) but would not remove them altogether.

3.33 There was also opposition to the recommendation from small business interests. They argued that the tax advantages – on corporation tax and Non-Domestic Rates – that charities enjoy over commercial traders can already generate unfair competition for businesses. This would be accentuated by anything that allowed charities to trade more liberally.

The Government's intentions

3.34 The Government does not accept this recommendation. Conducting trading activities within the tax exempt structure of charities would offend the principle of a level playing field with private sector businesses. At present, companies owned by charities are in the same position as any other company. It is a matter of choice whether or not profits are passed to shareholders within the Gift Aid arrangements. In addition, there is a statutory exemption from tax for small trades carried on by charities and a concession providing exemption from tax for minor trading activities for charitable purposes, such as bazaars and jumble sales. These relieve smaller charities of any administrative burden in conducting modest trading activity.

Campaigning by charities

Rec: That the Charity Commission guidelines on campaigning should be revised so that the tone is less cautionary and puts greater emphasis on the campaigning and other non-party political activities that charities can undertake. The legal position should continue to be that charities can campaign providing that:

- *a charity's activities are a means to fulfilling its charitable purpose;*
- *there is a reasonable expectation that the activities will further the purposes of the charity and benefit its beneficiaries, to an extent justified by the resources devoted to those activities;*
- *its activities are based on reasoned argument; and*
- *its activities are not illegal.*

The Charity Commission should distinguish between this position, which is a statement of legal and regulatory requirements, and good practice. It may wish to publish advice on good practice, but in doing so should emphasise that trustees have the freedom to pursue whatever activities they judge to be in the best interests of the charity. (4/4.56)

Summary of responses

3.35 There was strong support for this recommendation from 90% of the 158 respondents who commented. Large charities and umbrella bodies were prominent supporters, among whom there was a clear understanding that campaigning is an important part of many charities' work. Respondents believed that the Charity Commission's current guidelines do little to encourage charities to use the latitude available to them under current law. There was no general desire among respondents for changing the law to allow charities either more or less freedom to campaign than the law gives them at present.

3.36 The small minority who opposed this recommendation tended to believe that charities already spend too much of their donors' money on campaigning and self-promotion.

The Government's intentions

3.37 This recommendation is made to the Charity Commission. The Government supports the recommendation and shares respondents' views about the benefits to society of charities' campaigning and advocacy work. The Government does not believe that any change is warranted to the law on campaigning and political activities by charities.

3.38 The Charity Commission has indicated that it accepts this recommendation and will revise its guidelines in consultation with charities and others.

Mergers, administration and use of endowments

Rec: That the Charity Commission should provide specific advice to facilitate mergers, possibly by creating a dedicated internal unit. (5/4.62)

Rec: That a package of legal measures should be introduced that will facilitate mergers and, more generally, the administrative running of the charity. (6/4.62)

Summary of responses

3.39 These recommendations were supported by 93% of the 130 respondents who commented.

3.40 Many who supported it cautioned that neither the Government nor the Charity Commission should be allowed to put pressure on charities to merge. Merger decisions, or decisions to work collaboratively in other ways, were for the trustees of the charities concerned.

3.41 Equal numbers of respondents believe that there are too many charities (and that mergers are desirable) as believe that it is of prime importance to maintain the greatest possible diversity of charities.

3.42 Some respondents acknowledged that the Charity Commission, with its great expertise in charity law, already provides valuable help with mergers. At the same time they felt that, on aspects other than charity law and regulation, the Commission was not well qualified to give charities advice.

3.43 Respondents welcomed the Review's proposals (para 4.62) for specific legal measures to make merger and evolution easier for charities.

The Government's intentions

3.44 The Government supports these recommendations.

3.45 One recommendation is to the Charity Commission. It has said that it is keen to facilitate mergers and collaborative working between charities where this is in the best interests of its beneficiaries or users. It is considering ways of providing advice and guidance to charities, one of which could be the creation of a dedicated mergers unit.

3.46 The Government intends to include in the proposed Charities Bill those measures, recommended by the Review to make merger, evolution and administration easier for charities, that need primary legislation. Those that do not need primary legislation can be implemented by administrative action by the Charity Commission, which has accepted them and has put work in hand to implement them.

3.47 To meet a commitment in the Regulatory Reform Action Plan (2002), preparation of a Regulatory Reform Order (RRO) was under way. The RRO was to have contained a series of reforms, individually modest but collectively useful, aimed at easing administrative and other burdens and restrictions on charities. Some of these reforms were adopted by the Strategy Unit and included in its own list of proposed measures. The Government will now consider including the remainder of the proposed RRO reforms in the proposed Charities Bill.

Rec: Criteria for allowing trustees to spend capital should be revised. (7/4.68)

Summary of responses

3.48 Of the 97 respondents that commented on this recommendation, 94% supported it. Large charities and professional advisers were prominent among supporters.

3.49 Donors who give significant sums to charities are free to specify that their gift must be treated as permanent capital and only the income from it spent. Some respondents to this recommendation, including supporters of it, emphasised that it should not be made too easy for charities to overturn donors' wishes about the preservation of their capital gifts. If that happened, some donors might be discouraged from making capital gifts to charities.

3.50 The few opponents of this recommendation tended to believe that it would allow irresponsible trustees to dissipate a charity's assets and even to jeopardise its existence.

The Government's intentions

3.51 The Government accepts this recommendation and intends to include it in the proposed Charities Bill. This will permit the expenditure of permanent endowment where to do so will provide for a more effective means of fulfilling the purposes of the charity. It will provide safeguards for expenditure of larger sums with Charity Commission approval if expenditure is justified as consistent with the spirit of the original gift.

4 Recommendations for Improving the Range of Legal Forms

Community Interest Company

Rec: That a Community Interest Company (CIC) be established, with certain characteristics (see para. 5.21 of the Review). (8/5.21)

Summary of responses and the Government's intentions

4.1 This recommendation on a new legal form for social enterprise relates to company law, which is the responsibility of DTI, so is being taken forward separately. DTI, the Home Office and the Treasury launched a further consultation on the Community Interest Company (CIC) proposal in March 2003, and this closed in June 2003. An analysis of the responses to that consultation will be published later this year. Subject to the responses, the Government intends to bring forward legislation to make the CIC proposal part of company law. The consultation paper and other information on CICs, including a summary of the responses to the Review's recommendation, can be obtained at www.dti.gov.uk/cics

Industrial and Provident Societies

Rec: That the distinction between the bona fide co-operative and the society for the benefit of the community be retained, and that the bona fide co-operative is given a statutory definition in line with the International Co-operative Alliance Statement on the Co-operative Identity (9/5.35)

Rec: That the names be changed to Co-operatives and Community Benefit Societies, and that the umbrella term Industrial & Provident Society no longer be used. (10/5.35)

Rec: That Community Benefit Societies be allowed to have distinct categories of members (such as staff and users), but retaining the principle that voting must not be in proportion to capital stake. (11/5.35)

Rec: That the threshold for dissolving or demutualising both Co-operatives and Community Benefit Societies be raised, in line with current rules for building societies. (12/5.37)

Rec: That Community Benefit Societies also have the option, following a vote of members, to be able to choose to protect their assets in perpetuity for a public purpose and prohibit conversion into a Co-operative or a company. (13/5.37)

Rec: Constraints on financing should be relaxed, and the £20,000 limit on the amount of capital that can be held by any one member removed. (14/5.38)

Rec: Industrial & Provident Society legislation should be brought up to date with relevant aspects of company legislation (such as on the disqualification of directors), and future updating with company law should be made possible by statutory instrument. (15/5.38)

Summary of responses

4.2 The great majority of responses on these recommendations were positive. Respondents welcomed the report's recommendation to update Industrial and Provident Society legislation in line with company law. This was important to ensure a level playing

field with companies, and in particular the proposed Community Interest Company. Respondents also welcomed the recommendation to change the name of Industrial and Provident Societies to Cooperatives and Community Benefit Societies. It was felt that the name change would help the image and public recognition of IPSs.

4.3 Some respondents had reservations on the recommendation to give bona fide cooperatives a definition in line with the International Cooperative Alliance Statement on the Co-operative Identity. On the recommendation that Community Benefit Societies be allowed to have distinct categories of members, several respondents pointed out that this is possible under current legislation. A number of respondents felt that the withdrawable share capital limit should not be removed altogether, but should vary according to societies' size.

The Government's intentions

4.4 The Government broadly supports the report's recommendations on the Industrial and Provident Society sector. The Government accepts, in full or in part, six of the seven recommendations in the report. Several of these have already been implemented – either because they represent a continuation of existing policy, or they were taken forward by the Industrial and Provident Societies Act 2002. The recently enacted Co-operatives and Community Benefit Societies Act 2003 gives the Treasury power to bring forward an asset lock-in regime for Community Benefit Societies. Such a regime was a recommendation of the Review, and the Treasury is committed to taking it forward. The Government accepts in principle a number of the recommendations, but will undertake further work before deciding how to bring them into effect. These include the recommendations on changing the name of Industrial and Provident Societies to co-operatives and Community Benefit Societies, easing member share capital limits and updating Industrial and Provident Society legislation in line with company law.

4.5 The Government does not accept one of the report's recommendations, on giving co-operatives a statutory definition in line with International Co-operative Alliance Principles. This is because giving co-operatives such a definition would risk restricting the development of this form of Industrial and Provident Society in future.

4.6 A detailed analysis of each of the report's recommendations on Industrial and Provident Societies has been deposited in the Library of the House and is accessible on the Treasury website (www.hm-treasury.gov.uk).

Social enterprise

Rec: The DTI's Social Enterprise Unit should consult further on the feasibility and value of a branding scheme in order to identify whether there is an option that could be taken forward and supported by Government. (16/5.42)

Summary of responses

4.7 32 respondents commented on this recommendation, with 69% supporting it. Respondents represented a range of sectors and there were no sectoral divisions in the level of support.

4.8 Those respondents not in favour expressed reservations about the need for such a

scheme and its potential to cause confusion to the public. Doubts were also raised that a workable scheme could adequately embrace the diversity of the sector.

The Government's intentions

4.9 The Government set out its intention in *Social Enterprise: a strategy for success* (available via www.dti.gov.uk/socialenterprise) to investigate the development of a branding scheme and a quality standard for the sector. The Government plans to take forward this work once it can fully take account of updated legal forms, notably Community Interest Companies, that may influence the need for such measures.

Charitable Incorporated Organisation

Rec: That a new legal form designed specifically for charities, the Charitable Incorporated Organisation (CIO), be introduced, which will only be available to charitable organisations. (17/5.44)

Summary of responses

4.10 272 respondents commented on this recommendation, for which there was a high degree (95%) of support. Many respondents were enthusiastic about the potential offered by the CIO for reducing bureaucracy and aiding the efficient administration of charities.

4.11 The Review had proposed (para. 5.45) that the Government should consider, three years after the CIO's introduction, whether or not other corporate forms should continue to be available for charities. Many respondents believed that this was too short a period to allow a proper assessment of the CIO's prospects. There was, in any case, significant support for the view that CIO form should be an addition to the existing range of forms, not a replacement for any of them. It should not become the compulsory form for charities wanting to establish themselves in a corporate form.

4.12 Many respondents suggested that, for the CIO to be widely attractive, there would have to be an easy, low cost way for charities (including those governed by Royal Charter or by Act of Parliament) to convert from their existing form to the CIO form.

4.13 The few respondents opposing the recommendation argued:

- that the CIO appeared to offer no discernible advantage over the company limited by guarantee; and/or
- that the range of currently available forms was adequate and that adding to it would simply cause confusion among charities.

The Government's intentions

4.14 The Government accepts this recommendation and intends to include the CIO in the proposed Charities Bill. In line with the approach advocated by the Company Law Review, the basic framework for the CIO should be set out in primary legislation, while the technical provisions, which might need amendment in the light of experience of the CIO's operation, should be contained in secondary legislation. A feature of the CIO will be ease of conversion from other forms.

4.15 The Government proposes to review the need for other legal forms five (rather than the three suggested by the Review) years after the CIO is introduced.

5

Recommendations for Ensuring Accountability and Transparency, Building Public Confidence

Standard Information Return

Rec: As part of their Report and Accounts, the largest charities should complete an annual Standard Information Return. This should highlight key qualitative and quantitative information about the charity, focusing on how it sets objectives and measures its outcomes against these. (18/6.11)

Summary of responses

5.1 213 respondents, half of whom were large charities or their professional advisers, commented on this recommendation.

5.2 Although there was a clear expression of support (77% of respondents) for the aim behind this recommendation – to improve the relevance and accessibility of information about charities – many supporters had reservations about the recommendation itself. The main reservations were that:

- compiling the Standard Information Return could be a bureaucratic burden and lead to increased administration costs;
- the Standard Information Return could prove a trojan horse for charity league tables, which most charities would deplore;
- the diversity of charities meant that comparisons between charities, based on information extracted from Standard Information Returns, could be misleading and perhaps harmful;
- auditing the Standard Information Return could prove difficult because of the mix of quantitative and qualitative information.

5.3 Most who opposed the recommendation, as well as sharing some or all of these reservations, did so on the grounds that the need for more public information about charities had not been demonstrated by the Review.

5.4 A handful of charities (mainly grant-making trusts) did not believe that the content of the Standard Information Return would be relevant to their type of charity.

The Government's intentions

5.5 In the Government's view, easy public access to accurate and relevant information about charities is essential for real accountability, and for trust and confidence in charities. The Government believes that it is in charities' interests to keep the public well-informed about their achievements, policies, governance and finances.

5.6 The Government therefore accepts this recommendation. Work remains to be done to:

- develop the format and content of the Standard Information Return, using the Review's example (para. 6.11) as a basis;
- find a means of ensuring that the information can be compiled without placing undue administrative burdens on charities;

- develop a form of assurance of the information (whether by external scrutiny or by self certification by charities).

5.7 The Government will take this forward straightaway with the Charity Commission and in consultation with charities and others. It will explore the possibility of collecting the SIR information as part of the annual return that charities are already required to submit.

Statement of Recommended Practice (SORP) on Accounting and Reporting by Charities

Rec: The next charity SORP should develop improved methods for apportioning costs and expenditure, enabling more meaningful financial comparisons between organisations to be made. (19/6.12)

Rec: Improvements should continue to be made to the SORP to strengthen its focus on achievements against objectives, organisational impact and future strategy. (20/6.12)

Summary of responses

5.8 99 respondents commented on these recommendations. The level of support for them (77%), and reservations expressed by respondents, closely mirrored comments on the Standard Information Return (above).

5.9 Respondents repeated that comparisons between charities based on cost or expenditure ratios could be misleading, and perhaps harmful; again there was concern that a focus on ratios could bring unwelcome league tables a step closer.

5.10 Most who opposed the proposals did so in the belief that the SORP was already too complex and that accounts prepared in compliance with it were already beyond the average lay reader. Making additions to SORP would only exacerbate this.

The Government's intentions

5.11 The Government believes that introducing greater consistency in the way financial ratios are calculated will help towards ensuring that donors and others can make better informed decisions about, and comparisons between, different charities.

5.12 The Government supports these recommendations, recognising that development of these issues should take place within the context of the SORP-making process. The Charity Commission is the SORP-making body for charities. The Government will take forward any necessary amendment to the charity accounting and reporting regulations.

Ethical investment

Rec: For charities with total annual income of over £1 million, the Charities (Accounts and Reports) Regulations 2000 should be amended in line with the obligations of pension fund trustees to declare their ethical investment stance in their annual reports. (21/6.14)

Rec: Smaller charities which have significant holdings of equities should also make a declaration of their ethical investment stance on a voluntary basis, as a matter of good practice. (22/6.14)

Rec: The ability of charities to follow a broad ethical investment policy should be clarified. (23/6.14)

Summary of responses

5.13 96 respondents commented on this set of recommendations. There was clear majority (78%) support, with large charities prominent among supporters. Some respondents argued that requiring charities merely to state their ethical investment policies could give a misleading picture since charities might have done nothing to implement their policies in practice. The requirement should therefore extend to a description of how the stated ethical investment policies were being implemented. A few respondents went even further, suggesting that ethical investment policies were mere window-dressing unless they formed part of a commitment to ethical conduct in all aspects of an organisation's activities.

5.14 The minority of respondents who opposed the recommendation suggested that:

- it was unnecessary. The charity SORP already required disclosure of charities' investment policies. This should cover ethical investment policies;
- there was a risk that charities' investment policies would be over-influenced by popular pressure.

The Government's intentions

5.15 The Government accepts these recommendations, which can be implemented through changes to the SORP and secondary legislation. The Government is reviewing the effectiveness of the legislation requiring pension funds to disclose their socially-responsible investment policies. This review will inform the framing of the equivalent provision for charities.

5.16 The Charity Commission's guidance "Investment of Charitable Funds" (February 2003) includes a clarification of charity trustees' powers to make ethical or socially-responsible investments. The Government considers that this implements the third of the Review's recommendations on ethical investments.

Auditor protection

Rec: Auditors of all charities should have the same statutory protection from the risk of action for breach of confidence or defamation, as do the auditors of charities which are not companies. (24/6.20)

Summary of responses

5.17 There was a modest volume of response on this recommendation – 46 respondents commented – but respondents were unanimously in favour of it.

5.18 Some respondents suggested that this protection should be extended to independent examiners.

The Government's intentions

5.19 The Government accepts this recommendation and intends to use the proposed Charities Bill to implement it. The Government will also ensure that independent examiners are adequately protected.

Public charitable collections

Rec: A new, updated and unified local authority licensing scheme for public collections should be introduced, focusing on basic minimum requirements and geared towards encouraging legitimate collecting activity within the constraints imposed by competition for space and the avoidance of public nuisance. (25/6.24)

Summary of responses

5.20 There were 121 respondents to this recommendation. They overwhelmingly (94%) agreed that there should be a unified statutory licensing scheme, administered by local authorities, for all public collections. They believed that the current arrangements (one scheme for street collections, another for house to house collections) were inadequate and outdated.

5.21 Many respondents suggested that, if collections held in “public places” were to require licences, a clear definition of “public place” was needed. The majority view was that private places with unrestricted access should be treated as public places.

5.22 There was a consensus that face to face fundraising (ie the solicitation, typically in the street, of direct debit commitments rather than cash) should require a licence.

5.23 Some large charities argued that house to house collections of goods for their shops should be more lightly regulated than other collections.

5.24 Upwards of 40 large fundraising charities currently hold national exemption orders, which allow them to carry out collections covering a large number of local authority areas without needing to seek licences from each authority. The Review proposed to abolish national exemption orders. A number of current order-holders opposed abolition on the grounds that it would increase their administration costs.

5.25 Some respondents observed that the grounds on which local authorities could refuse to grant licences needed careful thought. Most local authority respondents suggested that they should be able to refuse a licence if they had reason to believe that a collection would incur excessive costs by comparison with the amount collected. Most charity respondents took the opposite view. They believed that local authorities’ proper concern was with the public nuisance aspects of collections. The costs of collections were a matter for charities themselves and the Charity Commission as their regulator.

The Government’s intentions

5.26 The Government accepts that a new unified statutory licensing scheme for public collections is needed, and intends to include it in the proposed Charities Bill.

5.27 The Government is aware that the last attempt to introduce a similar scheme, through Part III of the Charities Act 1992, was unsuccessful. Part III was enacted but has never been brought into force. This was because the licensing scheme in Part III was believed by charities to have flaws in the detail of its procedures which would have made the scheme unworkable overall.

5.28 To ensure that the new scheme is practicable, further detailed consultation will be needed with charities, local authorities and others interested in the regulation of public collections. A consultation document is being prepared which, it is envisaged, will set out the objectives of the proposed new scheme and make proposals, and seek views, on:

- what types of collection should be covered by the scheme;
- what the definition of a “public place” should be. This will be important because the requirement to have a licence will apply to collections carried out in any “public place”;
- whether very small, local collections should be exempt from the licensing requirement;
- new arrangements for applying for a licence to carry out a collection covering the whole or a large part of the country;
- whether collections of second-hand goods for charity shops should be treated differently from other types of collection;
- whether responsibility for licensing collections in London should move from the police to local authorities;
- how local authorities should decide on an organisation’s eligibility for a licence;
- how local authorities should decide what level of collecting activity their area has the capacity to accommodate;
- how local authorities should decide whether a collection is likely to be a public nuisance;
- how collections should be accounted for;
- what requirements should be put on organisers of collections to ensure that collections are properly and safely carried out.

Self-regulation to promote good practice in fundraising

Rec: Government should support, with seed-corn funding a new fundraising body to develop the self-regulatory initiative. The body would become self-financing perhaps by a small levy on donated income, although the method of financing would be a matter for the body itself. This would be based on a new voluntary Code of Practice designed to promote good practice in fundraising and to raise awareness of the sector’s commitment to good practice among the general public. (26/6.32)

Rec: The Home Secretary should be given the power to introduce statutory regulation, which he would exercise if he considers self-regulation to have been ineffective or inadequate. (27/6.32)

Summary of responses

5.29 Among the 152 respondents who commented on these recommendations there was clear majority (78%) support for the idea that people or organisations raising funds for charitable, benevolent or philanthropic purposes should be given the opportunity of self-regulation to raise fundraising standards. The prospect of statutory regulation should be kept very much in reserve.

5.30 But many supporters of self-regulation shared two reservations about specific aspects of the Review’s recommendations:

- they were not convinced that a new self-regulatory body was needed. They suggested instead that existing bodies (principally the Institute of Fundraising and the Professional Fundraising Regulatory Association), and the codes of practice they had already developed, should be used as the foundation of self-regulation;

- they did not agree that a new self-regulatory body – if one was created – should be financed by a levy on donations. They saw that as a tax on donations and believed that donors would object to part of their donation being diverted to pay the new body's costs.

5.31 Most respondents who opposed the idea of self-regulation did so in the belief that it was likely to be ineffectual and that statutory regulation would be preferable. They argued that the self-regulation scheme proposed by the Review would be voluntary, and that fundraising organisations that used poor fundraising practices would simply decline to join the scheme. This view was taken by most of the local authority respondents, who tended to believe that bogus fundraising and poor practices were more widespread than charities acknowledge.

The Government's intentions

5.32 The Government accepts the Review's recommendation that self-regulation should be the first resort in improving fundraising standards and practices.

5.33 It also accepts that the Home Secretary should have a power to introduce statutory regulation should self-regulation fail, and intends to include such a power in the proposed Charities Bill. The criteria which the Home Secretary will use to judge success or failure of self-regulation should be published.

5.34 The Government believes that the advantage of self-regulation in this area is that fundraising organisations will themselves be centrally involved in devising and implementing the regulation. They are more likely to be fully committed to it than they would be to a system of statutory regulation. Self-regulation is also likely to be more capable of adapting quickly to changes in fundraising methods than statutory regulation would be. Given the strong response in favour of self-regulation, the Government believes that fundraising organisations will have every incentive to make sure that self-regulation succeeds and none to see it fail.

5.35 The Government has welcomed the initiative taken by the Institute of Fundraising in setting up an independent commission to explore different models for a system of self-regulation and to recommend a preferred model.

Promotional ventures

Rec: The legislation should be amended to require a specific statement of the return that will be made to charitable, philanthropic and benevolent purposes from promotional ventures. (28/6.33)

Rec: The Home Office should issue guidance, building on that already available, setting out the form of statement appropriate to the particular type of promotion proposed. (29/6.33)

Summary of responses

5.36 66 respondents – over half of whom were large charities or professional advisers – commented on this recommendation. While giving clear support to the recommendation, respondents made these points:

- some contracts between charities and their commercial partners in joint fundraising and promotional ventures are complex. In those cases it can be very difficult for the commercial partner to give the consumer, at the point of purchase, an accurate statement of the benefits the charity will receive. This is

because the value of these benefits may not be precisely calculable until the promotion has been completed;

- although the legislation places the onus of compliance on the commercial partner, in practice it is often the charity that is expected to take responsibility for ensuring compliance (and the charity that is criticised for non-compliance);
- the current requirement is not often enough enforced.

5.37 The principal opponent of the recommendations suggested that:

- the recommendations could have the effect of decreasing transparency by encouraging commercial partners to make falsely high declarations of the benefits the charity will receive from joint promotions;
- the public does not distinguish between appeals conducted by charity employees and those conducted by commercial partners.

The Government's intentions

5.38 The Government accepts the recommendations. It intends to amend the current legislation (Part II of the Charities Act 1992) accordingly, through the proposed Charities Bill, and to issue guidance on appropriate forms of statement. The guidance will be developed in consultation with charities and their commercial partners and will take account of respondents' points.

5.39 The Government believes that, when a commercial organisation promotes a product or service with the inducement that a charity will benefit if the consumer buys the product or service, the consumer should be given as accurate a statement as possible of the benefit that will go to the charity. Deliberate exaggeration of the benefit going to charity will continue to be an offence. The same is true of appeals made by professional fundraising organisations working on charities' behalf, and the Government will also use the Charities Bill to amend the equivalent requirement applying to professional fundraisers in the same way.

Bogus fundraising

Rec: The liaison arrangements already in place between the Charity Commission, local authorities and the police should be strengthened by means of protocols setting out agreements on joint working (30/6.35)

Summary of responses

5.40 There were 44 respondents to the recommendation, near unanimous in their support for it. A number of respondents, while welcoming the recommendation, believed that the authorities that had the power to act against bogus fundraising did not regard it as priority. A remedy for this would be to make the Charity Commission, which did regard it as priority, a prosecuting authority.

The Government's intentions

5.41 The Government supports this recommendation, which is for the Charity Commission and other authorities to implement by administrative action. The Commission has held discussions with the Association of Chief Police Officers and the Local Government Association on the development of protocols for joint working. It is also represented at a number of local authority licensing forums at county, unitary authority and regional level.

Performance improvement

Rec: That Government provides support to the sector for work on performance improvement as part of its wider commitment to build the sector's capacity. The sector should work collectively to bring forward proposals by April 2003. (31/6.38)

Rec: Specific sub-sectors (groups of organisations involved in the same area of service provision) should pilot test an approach to developing common performance indicators and benchmarking for the organisations in their area. If this were to prove successful, it could be used to encourage other sub-sectoral groupings to follow similar approaches. It is not proposed that the Government or the Charity Commission would have a role in the exercise. (32/6.40)

Summary of responses

5.42 102 respondents commented, more than half of whom were large charities or umbrella bodies. There was clear support (86%) for this pair of recommendations, respondents generally agreeing that, with honourable exceptions, charities have been slow to focus on measuring and improving their performance.

5.43 Respondents agreed that initiatives to that end should be devised and put in hand by the sector itself, not by Government, but that Government should support appropriate initiatives with funding.

The Government's intentions

5.44 The Government supports these recommendations, and believes that the voluntary and community sector (VCS) should lead implementation.

5.45 A sector organisation will be commissioned by the ACU to develop, by April 2004, a strategy that identifies development and investment priorities for improving performance in the VCS. This will include the use of quality systems in the sector and within sub-sectors, and achieving more joined up approaches across VCS funders in their evaluation and monitoring requirements of voluntary and community organisations.

National curriculum

Rec: That the citizenship component of the National Curriculum should contain more to encourage learning about, and participation in, charitable and not-for-profit activity, including volunteering and trusteeship. (33/6.47)

Summary of responses

5.46 There was near unanimity of support for this recommendation from the 91 respondents who commented.

5.47 While welcoming the recommendation, many respondents:

- felt that it would merely scratch the surface of the problem of engaging young people;
- acknowledged that the National Curriculum was already quite full.

The Government's intentions

5.48 The Government agrees that it is important for young people to learn about, and have opportunities to participate in, charitable and not-for-profit activities. The new Citizenship component of the National Curriculum offers pupils opportunities to learn about the workings of charitable and voluntary bodies, and the Government will monitor its implementation with this in mind. Community involvement and participation are important elements of citizenship education, and the Government will continue to encourage initiatives for young people to learn about and become involved in voluntary activities.

Reporting on procedures for recruitment of trustees

Rec: The SORP should provide for annual reports to include a statement of procedures for recruitment, induction and training of new trustees. (34/6.48)

Summary of responses

5.49 111 respondents commented on this recommendation, showing solid (86%) support for it.

5.50 There was some concern, among supporters and opponents alike, that this proposal was yet another addition to the reporting burden, to relatively little benefit. Opponents tended to believe that charities' trustee recruitment policies should not be a matter of public record but could, if required, be disclosed to the Charity Commission.

5.51 There was a strong view from religious charities that nothing must prevent them from specifying adherence to their particular beliefs and values as a condition of a becoming a trustee.

The Government's intentions

5.52 The Government thinks it important that charities should have, and should disclose, effective policies for recruiting trustees and equipping them to govern their organisations effectively. The Government supports this recommendation. It accepts that the recommendation should be taken forward through the SORP-making process, supported as necessary by changes in secondary legislation which are for the Government.

5.53 The Government would encourage charities in their efforts to bring greater diversity to trustee boards, always bearing in mind that trustees should be identified primarily for the skills and experience they can bring to the charity's governance.

Payment of trustees

Rec: A trustee body should have a statutory power to pay an individual trustee to provide a service to a charity (outside their duties as a trustee) if they reasonably believe it to be in the charity's interests to do so. (35/6.48)

Summary of responses

5.54 185 respondents commented on this recommendation, two thirds in support and one third in opposition.

5.55 A full range of opinions were represented in both support and opposition, from those who advocated a wide general power for charity trustees to be paid to those who believed that no charity trustee should ever be paid.

5.56 There was a general feeling, from both supporters and opponents, that safeguards would be needed to ensure that this limited power to pay trustees was not abused out of self-interest and did not give rise to damaging conflicts of interest.

The Government's intentions

5.57 The Government agrees with the arguments rehearsed by the Review (paras. 6.43 – 6.46) for and against the payment of trustees and accepts this recommendation, which it intends to include in the proposed Charities Bill.

5.58 The Government will introduce safeguards to prevent misuse (deliberate or otherwise) of this power. Safeguards could include a limit on the number or proportion of trustees of a charity who may receive payment, or a limit on the amounts that individual trustees may receive in payment.

Personal liability of trustees

Rec: Charity trustees should be able to apply to the Charity Commission as well as the court for relief from personal liability for breach of trust where they have acted honestly and reasonably. (36/6.48)

Summary of responses

5.59 The 87 respondents who commented on this recommendation approached unanimity in support of it. The only reservation – held by a very small number of respondents – was over the Charity Commission's ability to consider objectively an application for relief from personal liability where that liability had been uncovered by an investigation conducted by the Commission itself.

The Government's intention

5.60 The Government believes that this recommendation will help some trustees to resolve their fears over personal liability and accepts it, intending to include it in the proposed Charities Bill.

6 Recommendations for Ensuring Independent, Fair and Proportionate Regulation

Reforms to the Charity Commission. The registration process. The audit threshold.

Rec: The charity regulator should have clear strategic objectives in statute setting out what it exists to achieve as regulator. (37/7.6)

Rec: Indicators should be developed by the regulator, in consultation with interested parties, to allow its performance against its objectives, and its impact on the charitable sector, to be judged. (38/7.7)

Rec: Legislation should require the Commission to report its performance against its objectives in its annual report. (39/7.11)

Rec: Legislation should require the Charity Commission to hold an open Annual General Meeting at which to present its report and answer questions. It should continue its programme of regional meetings. (40/7.12)

Rec: The Charity Commission should open its Board meetings to the general public. (41/7.22)

Rec: The Charity Commission should develop a better focus on the needs of stakeholders other than the regulated constituency by:

- providing advice on giving aimed at potential donors;*
- making standard information about the largest charities available on its web-site; and*
- signposting on its website other appropriate bodies that members of the public should contact if they wish to complain about a particular aspect of a charity's work or mode of conduct. (42/7.26)*

Rec: The Charity Commission's advisory role should be defined in statute to give a clearer focus on regulatory issues. (46/7.49)

Rec: The Charity Commission should review, with sector participation, and report on the performance of different charitable sub-sectors with a view to correcting information failures and enabling stakeholders to maximise beneficiaries' interests and better fulfil underlying charitable objects. (47/7.58)

Rec: The charity regulator should continue to operate at arms length from Ministers. It should become a statutory corporation called the Charity Regulation Authority, whose relationship with Ministers is clearly defined in statute. (48/7.63)

Rec: Legislation should enable the number of Commissioners to be increased from five to nine, with one Commissioner appointed by the Secretary of State for Wales. There should be separate Chair and Chief Executive posts. (49/7.66)

Rec: The Charity Commission should open an office in Wales. (50/7.68)

Summary of responses

6.1 154 respondents commented on the recommendations for constitutional and other organisational changes to the Charity Commission. There was strong and broad support – from some 95% – for the nature and direction of the reforms as an overall package.

6.2 There was similarly clear support for most of the reforms where respondents commented on them individually. However, three of the recommendations that were commented on individually attracted opposition:

- for each respondent specifically endorsing the recommendation that the Commission should hold its Board meetings open to the public there were three who doubted the wisdom of it. Most of these felt that open Board meetings would become mere window-dressing, with the real decisions made at another time;
- equal numbers of respondents supported and opposed the recommendation that the Commission should carry out performance reviews of particular charitable sub-sectors. Opponents either doubted that the Commission had the expertise to do this, or believed as a matter of principle that such reviews were not the province of the regulator;
- respondents opposed, by a ratio of three to one, the recommendation that the Commission's name should be changed to Charity Regulation Authority. Opponents feared that the name change would position the Commission purely as a "watchdog", and that charities would be reluctant to approach the Commission in its continuing (though refocused) role as an adviser and supporter of charities.

6.3 In its response to the consultation, the Charity Commission supported the majority of the recommendations but had reservations:

- about holding its Board meetings in public. The Commission emphasised its commitment to openness and accountability and outlined a number of initiatives it is undertaking to enhance its transparency. But, like other respondents, it feels that a requirement for absolute public accessibility to Board proceedings would jeopardise good governance and policy-making;
- about the proposed change of its name. It argues for promoting recognition of its current name, which is very high within the charitable sector, beyond the sector, rather than starting afresh with a name which is not recognised anywhere.

The Government's intentions

6.4 The Government accepts the recommendations for reforms to the Charity Commission except for the proposed name change, which it does not accept, and for the recommendation on open Board meetings which it partially accepts.

6.5 The recommendation that the Charity Commission should open its Board meetings to the general public was qualified in the text of the Review (para. 7.22). The Review envisaged that meetings should be open in whole or part, acknowledging that there would on occasion be reserved business. The Government believes that the Commission's Board meetings should be open to public observation unless there are good reasons – to do with the Commission's capacity to govern itself, and to discharge its statutory functions, effectively – why particular discussions or meetings should not be open.

6.6 The Government accepts the recommendation that the Charity Commission should carry out performance reviews of charities. It believes that the Commission has power to carry out these reviews under the existing law.

6.7 The Government will consider the other recommendations further and intends to include those needing primary legislation in the proposed Charities Bill.

6.8 The Commission's specific statutory powers will be attuned to its newly-focused regulatory role and its desire to discharge its functions in an economical way.

Rec: The Commission should seek to separate the process of judging whether or not an applicant is a charity from that of assessing viability. (43/7.38)

Rec: The circumstances in which an "activities test" can be used as an aid to interpreting purposes should be clarified in statute. (44/7.38)

Summary of responses

6.9 56 respondents commented on these recommendations. There was a very high level of support, with umbrella bodies and professional advisers prominent, for the Commission's separating its test of charitable status from its assessment of organisational viability. There was some feeling, though not universal, that the registration process was too difficult and that the Commission could do more to help applicants through it.

6.10 Views were divided on whether or not the Commission ought to look at a new organisation's viability. Some respondents believed that viability is not the legitimate concern of the regulator; some believed that it is a legitimate concern; some believed that the Commission should be able to refuse registration to non-viable organisations even if they are legally charitable.

6.11 There was little enthusiasm for a statutory provision clarifying the circumstances in which the Commission could use an "activities test".

The Government's intentions

6.12 The Government supports the recommendation for separating the test of charitable status from the assessment of organisational viability at the point of registration. This is for the Charity Commission to implement by administrative action. The Charity Commission has introduced (April 2003) a simpler process for registration of charities with an expected income below £10,000. It is developing new procedures to separate legal from administrative issues when considering applications to register.

6.13 The Government does not agree with the Review that a statutory clarification of the "activities test" is either necessary or desirable and does not intend to take that recommendation forward.

Rec: That all charities with income of £1m or more in any financial year should be required to have their accounts for that year professionally audited. The independent examination requirement should apply to charities with income between £10,000 and £1m. The latter threshold should be re-examined if the audit threshold for non-charitable small companies changes. (45/7.44)

Summary of responses

6.14 128 respondents commented on this recommendation. It was supported by about two thirds of respondents, while a third (including some charities that would be released from the statutory audit obligation) had doubts about it or unequivocally opposed it. Professional advisers (including auditors) supported and opposed it in equal numbers.

6.15 Respondents supporting the proposal appeared to endorse the Review's conclusion (para. 7.44) that the current professional audit rules are too complicated and impose an audit requirement at too low a level. Several respondents confirmed that it would reduce costs for them.

6.16 Opponents of the recommendation suggested that:

- it would reduce the accountability of medium-sized charities, leading to greater risk of abuse;
- independent examination was a much less rigorous form of scrutiny than audit and was not an adequate substitute for it for charities of this size;
- there might not be enough competent independent examiners to take on the extra work.

6.17 From respondents opposing the recommendation, or parts of it, came these suggested modifications:

- the threshold could be raised, but to £500,000 rather than £1m;
- there should be an asset value threshold as well as an income threshold, so that charities with income above £X or assets worth more than £Y would be required to have a professional audit;
- a professional qualification should be required of independent examiners of charities above the current threshold but below the new, higher threshold.

The Government's intentions

6.18 The Government agrees that the audit threshold is too low, and the rules too complex in some respects, but accepts the accountability and other arguments in favour of a more modest increase than that recommended by the Review.

6.19 The Government intends to pursue the three modifications suggested by respondents, above, with a view to including them in the proposed Charities Bill.

Regulatory approaches UK-wide

Rec: A new umbrella committee, on which all UK charity regulators are represented, should be created, to ensure a consistent regulatory approach UK-wide and to share information and best practice. (51/7.68)

Summary of responses

6.20 Only 32 respondents commented on this recommendation. Support for it was just short of unanimous.

6.21 Some respondents – charities that operate throughout the UK – argued for a single UK-wide regulatory system for charities.

The Government's intentions

6.22 The Government supports this recommendation and will take it forward by administrative action.

6.23 Regulators in England and Wales, Scotland, and Northern Ireland have in recent years built up good working relations to, for instance, co-operate in tackling fraud and misconduct within charities operating in more than one jurisdiction. Now that charity law and regulation are devolved matters in Scotland and in Northern Ireland – and are, or have been, under review in both territories – there is an even greater need for strategic coordination of regulatory approaches.

Tribunal

Rec: An independent tribunal should be introduced to hear appeals against the legal decisions of the Commission as registrar and regulator. This will be introduced alongside a streamlined single stage internal review procedure. (52/7.79)

Summary of responses

6.24 120 respondents commented on this recommendation. There was strong support for it (92%) among respondents, with large charities and professional advisers prominent. There was a general consensus that it ought to be easier to challenge the Charity Commission's decisions, both to ensure the quicker recognition of new charitable purposes and to give people directly affected by a decision a more economical means of seeking redress than currently is available.

6.25 Some respondents argued that a "suitors' fund", resourced by the Government, should be set up alongside, or instead of, a tribunal. A suitors' fund would pay the costs of taking important cases to the High Court.

6.26 Respondents who opposed the recommendation did so typically in the belief that, in practice, a tribunal would not offer much of a practical advantage over the present arrangements for challenging Commission decisions by appeal to the High Court.

The Government's intention

6.27 The Government accepts this recommendation and proposes to include the tribunal in the proposed Charities Bill.

6.28 In March 2003 the Government published a summary² of the responses to its consultation on Sir Andrew Leggatt's review of the tribunal system. The Government's own detailed proposals for tribunal reform, which are being worked up in the light of the consultation, will be published in due course. The proposed charity tribunal will need to be within the scope of the reformed tribunal system.

Registration rules for small charities

Rec: The threshold for compulsory registration should be raised to £10,000. The two criteria relating to permanent endowment and use/occupation of land should no longer apply. (53/7.84)

Rec: All charities below the new registration threshold should have the status of "Small Charity". They would not be entitled to register as charities, but those that made tax repayment claims would have acceptance from the Inland Revenue of their charitable status – as is already the case for unregistered charities in England and Wales, and for all charities in Scotland and Northern Ireland. (54/7.86)

Rec: There should also be a change in the law to enable funders who are legally limited to funding registered charities also to fund "Small Charities". (55/7.86)

Summary of responses

6.29 This group of recommendations attracted the second highest number of responses. The 420 respondents included 168 small charities, all of which would be affected by the recommended changes.

² available at www.lcd.gov.uk/consult/leggatt/leggattresp.htm

6.30 There was clear majority opposition to these recommendations from respondents other than small charities. Among small charities themselves opposition exceeded 95%, although it was clear from some responses (particularly those from small charities) that respondents did not have a full understanding of the recommendations and how they would affect small charities.

6.31 Opposition focused on one specific effect of the recommendations: that the right of small charities which are below the threshold for compulsory registration with the Charity Commission to register voluntarily would be removed (para. 7.86).

6.32 Overwhelmingly the main ground of opposition was that small charities derive much of their credibility with funders, the public, local authorities, banks, and other organisations from their registration as charities. Registration provides a mark of official recognition and signals that a charity is properly constituted and subject to the oversight of a regulatory body. Respondents argued that removing the right of small charities to register would remove their credibility and, in some cases, jeopardise their existence. They saw the charity law compliance requirements that follow after a charity is registered as far from onerous, and a small price to pay for the credibility that registration gives.

6.33 Very few respondents believed that the Review's proposal (para. 7.86) to create a new "Small Charity" status based on registration with the Inland Revenue would provide an acceptable alternative to registration with the Charity Commission.

6.34 Some respondents also opposed the recommendations on the grounds that local authorities consult the register of charities to confirm an organisation's entitlement to 80% (or higher) relief from Non-Domestic Rates. A charity that was not registered would find it difficult to establish its entitlement.

6.35 A number of small charity respondents believed (wrongly) that the recommendations would deprive small charities of their tax reliefs and/or their charitable status.

6.36 The other major aspect of the recommendations – to raise the income threshold for registration – was relatively uncontested.

The Government's intentions

6.37 In making its recommendations the Review had noted (para. 7.84) the disparity between the current registration threshold (£1,000) and the Charity Commission's monitoring threshold (£10,000). This meant that there were many registered charities, with income below £10,000, that were not actively overseen by the Commission. The Review observed that this might be giving false comfort to the public and funders (who would assume that registered charities were actively overseen).

6.38 The Review also suggested (para. 7.83) that the process of registering with the Commission could be burdensome for some small organisations, especially those not used to dealing with bureaucracies and without access to professional advice. By recommending an increase in the registration threshold, the Review was aiming to avoid imposing the duty to register on organisations until they were better resourced to negotiate the registration procedure.

6.39 Major themes of the Review are accountability of, and public confidence in, charities. The Review concluded that the availability of accurate, easily-accessible

information about charities is important to secure both. The Review did not believe (para. 7.86) that releasing small charities from registration would mean that they went “off the radar”.

6.40 The Government believes that the registration rules for small charities should:

- give credible organisations a mark of official recognition that allows them to convince others of their credibility;
- recognise the limited capacity of small charities to cope with bureaucratic requirements and procedures; and
- ensure that appropriate information about small charities is available to the public.

6.41 The Government believes that requiring charities with £1,000 a year to register is unduly bureaucratic and intends to raise the registration threshold, but to £5,000 rather than the Review’s recommended £10,000.

6.42 The Government proposes to allow charities below the new registration threshold to register voluntarily. It acknowledges that charities between the new threshold and the Charity Commission’s monitoring threshold of £10,000 will be registered but unmonitored, something that the Review felt gave false comfort to those dealing with the charities. The Government believes that the “false comfort” argument is outweighed by:

- the need to ensure that the smallest charities do not have to enter the “bureaucratic net” until they are better resourced to do so, or unless they choose to;
- the fact that the Charity Commission’s regulatory powers apply in full to unregistered charities below the threshold.

6.43 The Government anticipates that, in practice, the majority of existing registered charities below the new threshold will elect to remain registered. New charities who seek the credibility of “registered” status will have an incentive to register regardless of their income.

Excepted charities

Rec: Excepted charities with incomes above the new proposed registration threshold should be required to register. A higher registration threshold could be set to ensure a manageable process of registration. (56/7.91)

Summary of responses

6.44 88 respondents commented on this recommendation. Overall, a clear majority of respondents (69%) supported it; but that figure hides divisions.

6.45 Support for ending excepted status was very strong among respondents who were not themselves excepted charities. These respondents tended to believe that excepted status was an historic anomaly which could no longer be justified, and that all excepted charities should be subject to the same regulatory arrangements as other charities.

6.46 Most of those opposing the recommendation were excepted charities. Among these, religious bodies predominated, citing these reasons why the system of exceptions should continue:

- there have been no organisational problems or regulatory failures to justify closer regulatory oversight;
- many small church charities have constitutions that would not meet the Charity Commission's current standards for registration;
- the bureaucratic burden would increase following registration, making it more difficult to attract competent treasurers and other volunteers.

6.47 Most excepted charities, whether or not they agreed with the recommendation in principle, believed that the £50,000 initial registration recommended by the Review threshold was too low. Many suggested that it should be set at £100,000.

The Government's intentions

6.48 The Government agrees with the Review's argument (para. 7.90) that there is no longer a principled justification for keeping the classes of charity that are currently excepted outside registration with the Commission. The Commission's register is no longer the bare and inaccurate list, hard to access, that it was when exceptions were created. It is now the primary national database of the existence, purposes and activities of charities. It is an important element of the public accountability of charities. And it underpins the Commission's regulatory oversight of charities through annual monitoring.

6.49 The Government therefore accepts this recommendation and proposes to include provision for ending exceptions in the proposed Charities Bill. It recognises, however, that work remains to be done to devise arrangements for the orderly registration of different groups of excepted charities. These arrangements, which are likely to be different for different groups of charities, will aim to:

- avoid adding unduly to bureaucratic burdens; and
- allow charities to preserve the relationships that currently exist between parent and subsidiary charities or between members of federated or similarly-constructed networks.

6.50 To meet these aims the Government intends to set the initial registration threshold for formerly-excepted charities at £100,000 annual income.

Exempt charities

Rec: The monitoring regimes to which housing associations, universities and colleges as exempt organisations are subject should be adapted to cover basic charity law requirements. (57/7.96)

Rec: The reports and accounts of exempt charities should clearly set out the voluntary funds they hold and how they use them. The same level of information about exempt charities as is required of charities should be made accessible on or via the Charity Commission web-site. (58/7.96)

Rec: The Charity Commission should be given a power to investigate exempt organisations on the request of their 'main regulator'. (59/7.96)

Rec: Larger exempt charities without a 'main regulator' should be registered with the Charity Commission. (60/7.96)

Summary of responses

6.51 69 respondents commented on these recommendations. There was clear acceptance – shared by exempt charities and others alike – of the principle that all organisations enjoying the advantages of charitable status should, in return for those advantages, comply with the basic principles of charity law.

6.52 Many exempt charity respondents argued that, although they were outside the jurisdiction of the Charity Commission, they were subject to adequate – or, in some cases, excessive – regulation from other sources. Any regulatory arrangements introduced to ensure compliance with basic charity law principles should avoid adding materially to the bureaucratic burden.

6.53 For some groups of exempt charities – such as Registered Social Landlords – there was a clear consensus on which body was best placed to be “main regulator” for the group. For some other groups – such as museums, and the Colleges of Oxford and Cambridge Universities – there was no such consensus.

6.54 Some respondents believed that the Review’s “main regulator” proposal should be abandoned and that all exempt charities should be registered with the Charity Commission. They argued that it was illogical to put responsibility for overseeing compliance with charity law in the hands of any body other than the charity regulator.

The Government’s intentions

6.55 The Government accepts these recommendations. It agrees the importance of ensuring that exempt charities are accountable, transparent, and compliant with the basic principles of charity law. Some groups of exempt charities are already in that position, or near to it, while others might be some distance from it.

6.56 At the same time the Government is aware that, in some sectors, exempt charities are already highly regulated (for example, Higher Education Institutions. The Better Regulation Task Force concluded in 2002 that HEIs were in some respects overburdened with bureaucracy).

6.57 The Government’s aim is, therefore, to establish arrangements that secure greater accountability and charity law compliance from exempt charities while imposing the minimum of extra bureaucracy. The Government will, with exempt charities either individually or in groups, aim to identify acceptable main regulators for each charity or group. Where this cannot be done, the charity or group will be required (if above a £100,000 annual income threshold) to register with the Charity Commission.

Impact of regulation

Rec: The Charity Commission, with advice from the Cabinet Office’s Regulatory Impact Unit, should quantify the impact of regulation on charities and other not-for-profit organisations, monitor it over time, publish the results and highlight areas where regulation appears excessive. (61/7.101)

Summary of responses

6.58 There was unanimous support for this recommendation from the 54 respondents who commented.

6.59 A number of respondents suggested that greater objectivity would be seen to be brought to this task if it were not carried out by the Charity Commission – or, at least, not by the Commission on its own. The Commission shares this view.

The Government's intentions

6.60 The Government supports this recommendation, which can be implemented by administrative action by the Charity Commission.

6.61 The Government agrees that, in the interests of visible objectivity, the Commission should consider engaging academic or other appropriate partners in carrying out this task. The Government will agree with the Commission a timetable and measures of success for the task.

Annex A

This table shows the number of people or organisations of different types that responded to the consultation.

Type of respondent	No. of respondents	% of total respondents
Small charities (annual income around or below £10,000. Includes new charities with unknown resources)	178	16
Independent schools (charitable and non-charitable)	177	16
Large charities (annual income above £1m)	161	15
Medium charities (annual income between £10,000 and £1m)	100	9
Umbrella bodies (representative or support bodies for the not-for-profit sector or for a particular sub-sector within it)	84	8
Others (inc private individuals, businesses, political parties)	78	7
Charity workers (trustees, volunteers, employees etc of charities responding in a personal capacity rather than on behalf of an organisation)	72	7
Professional advisers (solicitors, accountants, auditors, management or fundraising consultants, etc)	61	6
Special interest bodies (bodies interested in single issues – eg sports, taxation – or pursuing the interests of particular groups – eg fundraisers)	49	5
Government (local authorities, Government departments, regulatory bodies)	40	4
Umbrella bodies for small organisations (representative or support bodies whose constituencies include a high proportion of small organisations)	40	4
Voluntary organisations (non-charitable voluntary organisations not describing themselves as social enterprises)	16	1
Social enterprises (non-charitable bodies describing themselves as social enterprises)	11	1
Professional bodies (professional institutes)	11	1
Academics (inc think tanks)	9	1
Total	1087	101

Although some people or organisations fall into more than one category, each respondent has been counted only once (eg umbrella bodies which are charities have been counted as umbrella bodies but not as charities).

An organisation on whose behalf more than one response was made has been counted only once.

Annex B

Summary: Review recommendations and the Government's intentions

Rec No	Recommendation	Govt intends to accept?
1	Definition of charity.	Yes, with these additions to the proposed list of charitable purposes: <ul style="list-style-type: none"> • the promotion of animal welfare; • the provision of social housing; and • the advancement of science. To be included in the proposed Charities Bill.
2	Checks on the public character of charities.	Yes.
3	Trading by charities.	No.
4	Campaigning by charities.	Yes – Government supports, Charity Commission accepts.
5	Charity Commission to advise on mergers.	Yes – Government supports, Charity Commission accepts.
6	Measures to facilitate charity mergers and administration.	Yes. To be included in the proposed Charities Bill.
7	Use of endowments.	Yes. To be included in the proposed Charities Bill.
8	Community Interest Company.	Yes, subject to analysis of responses of further consultation (joint HMT/DTI/HO) carried out between March and June 2003.
9 – 15	Industrial and Provident Societies.	Yes, except for the recommendation to give cooperatives a statutory definition following International Cooperative Alliance principles.
16	Social enterprise.	Yes.
17	Charitable Incorporated Organisation.	Yes. To be included in the proposed Charities Bill.
18	Standard Information Return.	Yes.
19 – 20	Statement of Recommended Practice (SORP) on Accounting and Reporting by Charities.	Yes – Government supports, Charity Commission accepts.
21 – 23	Ethical investment.	Yes. Rec 23 already implemented by Charity Commission.
24	Auditor protection.	Yes. To be included in the proposed Charities Bill. Similar protection will also be considered for independent examiners of charities' accounts.
25	Public charitable collections.	Yes. To be included in the proposed Charities Bill. Before that, further public consultation to be carried out.
26 – 27	Self-regulation to promote good practice in fundraising.	Government accepts that self-regulation should be tried first. Reserve power for statutory regulation to be included in the proposed Charities Bill.
28 – 29	Promotional ventures.	Yes. To be included in the proposed Charities Bill.

Annex B

Rec No	Recommendation	Govt intends to accept?
30	Bogus fundraising.	Yes – Government supports, Charity Commission accepts.
31	Performance improvement.	Yes.
– 32		
33	National Curriculum.	Citizenship component is new – Government will monitor its implementation.
34	Reporting on procedures for recruitment of new trustees.	Yes – Government supports, Charity Commission accepts.
35	Payment of trustees.	Yes, with the addition of statutory safeguards to prevent misuse of the power. To be included in the proposed Charities Bill.
36	Personal liability of trustees.	Yes. To be included in the proposed Charities Bill.
37 – 42 & 47 – 50	Reforms to the Charity Commission.	Yes, except for the recommended change in the Charity Commission’s name. Government partially supports the recommendation for the Commission to open its Board meetings. To be included in the proposed Charities Bill.
43 – 44	Registration process.	Government supports and Charity Commission accepts recommendation to separate legal and administrative issues in registration process. Government does not accept recommendation on an “activities test”.
45	Audit threshold.	Yes, with possible modifications: <ul style="list-style-type: none"> • the income threshold to be raised to £500,000 rather than £1m; • asset threshold to be introduced; • professional qualification to be required of independent examiners of larger non-audited charities. To be included in the proposed Charities Bill.
51	Regulatory approaches UK-wide.	Yes.
52	Tribunal.	Yes – tribunal to fall within the scope of the reformed tribunal system. To be included in the proposed Charities Bill.
53 – 55	Registration rules for small charities.	With major modifications: <ul style="list-style-type: none"> • registration threshold to be raised to £5,000 instead of £10,000; • voluntary registration to be allowed for charities below new threshold. To be included in the proposed Charities Bill.
56	Excepted charities.	Yes, but with the initial registration threshold set at £100,000 income instead of £50,000. To be included in the proposed Charities Bill.
57 – 61	Exempt charities.	Yes. To be included in the proposed Charities Bill.
61	Impact of regulation.	Yes – Government supports, Charity Commission accepts.